



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CIVIL CASE NO. 99 OF 2012

CHARLES MBURU NJUGUNA PLAINTIFF

VERSUS

ISAAC WANYONYI KIRIMOCHO

CALEB WANJALA KIRIMOCHO

DAVID KIRIMOCHO..... DEFENDANTS

RULING

This application dated 9th July 2012 is brought under Order 40 Rule 4 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. In it the Applicant asks the honourable court to confirm the interim orders of injunction earlier issued restraining the Respondent from carrying out any dealings on the suit land pending the determination of the suit.

Questions for determination:

Has the application met the threshold of the principles of granting injunctions as laid down in the renowned case of **Giella Vs. Cass Man Brown**.

Analysis of the submissions:

Mr. Juma for the Applicant submitted that the applicant is the owner of plot 1A located at Kimilili Township.

The Applicant acquired the plot by way of purchase. The applicant submits the Defendants/Respondents encroached on this plot and started digging up latrines in 2012. These actions by the defendant will cause him irreparable loss. He urged the court to allow the application.

Mr. Kassim for the Respondent in opposing the application submitted the Applicant's plot is not within Kimilili Municipality. In any event, the applicant did not pay the entire purchase of Kshs. 30,000/= that was agreed.

The Respondents allege the applicants plot is 1D and therefore is not entitled to claim the plot he is claiming. In their mind, they were only complying by the notice from the Public Health which required them to put up toilets.

Determination

From the pleadings and submissions, it is clear the Defendants/Respondents were digging pit latrines on a portion/plot which the Applicant is claiming. It is also not disputed that the Defendants family sold a plot to the applicant. The issue is the location of the plot bought by the Applicant. According to the Applicant, his plot is where the Respondents were digging the pit latrines. While the Respondents submit the Applicant's plot is outside Kimilili Town.

This court finds it is in the interest of justice to maintain the status quo (balance of convenience) so that both parties do not carry out any dealings on this plot until the suit is heard to determine who owns the suit plot. I therefore grant prayer 3 of the application thereby issuing a temporary injunction directed to the Defendants/Respondents stopping them from carrying out any developments on the suit land pending the determination of this suit.

To forestall unnecessary applications, being filed that would delay the determination of this matter, the applicant will also not to develop the suit property until the suit is determined.

The costs of this application to abide out come of the main suit.

RULING DATED, SIGNED, READ AND DELIVERED in open court this 5th

day of November, 2013.

OMOLLO

JUDGE.



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